IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
ORDER

(1)Smt. Ugma Devi Vs. State of Rajasthan & Ors.
(S.B.C.WRIT PETITION NO.334/06)

(2) Smt. Geeta Devi Vs. State of Rajasthan & Ors.
(S.B.C.WRIT PETITION NO.335/06)

Dated:- 15.11.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.B.M.Bohra, for the petitioner.
Mr. B.L.Tiwari, Dy.Government Advocate.

BY THE COURT:-

In these writ petitions, the petitioners have sought directions against the respondents to allow them to operate the quarry nos. 877 & 878, Keru, district Jodhpur, on the basis of the quarry license said to be validly transferred in their favour.

Since,both the writ petitions involve common questions of law and facts, therefore, the same are being heard and disposed of by a common order.

The brief facts of the case as set out in the writ petition no. 334/06 are that one Shri Manak Lal was holding a license issued by the Mining Engineer,Jodhpur to operate quarry no. 878 at Keru. Vide order dated 11.2.91 passed by the Mining Engineer,Jodhpur, said quarry was transferred in favour of the petitioner in accordance with provisions of the Minor Mineral Concession Rules, 1986(in short "the Rules of 1986"

hereinafter).Similarly, in writ petition no. 335/06, a license to operate quarry no. 877 existing in the name of one Shri Udai Kishan stood transferred in the name of the petitioner vide order dated 11.2.91 passed by the Mining Engineer,Jodhpur in accordance with the provisions of the Rules of 1986.

It is stated that after transfer of the quaries as aforesaid, the petitioners were operating the same strictly in accordance with the terms and conditions of the quarry license and provisions of the Rules of 1986. The rent was deposited by the petitioners upto 30th September, 2004, thereafter, when the petitioners offered the rent, the respondents declined to accept the same and the petitioners were restrained orally from operating the quarry. A representation dated 3.5.04 submitted by the petitioner to the Mining Engineer, Jodhpur was not responded.

A reply to the writ petition has been filed by the respondents in Writ Petition No. 334/06 . It is stated by the respondents that the quarry no. 878, situated at Keru was allotted to Shri Manak Lal on 22.12.86 and the demarcation of the quarry was made on 29.2.87. According to the respondents , the petitioner has deposited the rent and security for operating the quarry upto 30.9.92 and thereafter, no rent was accepted by the department from the petitioner inasmuch as, the quarry in question falls within the fenced area of the Department of Forest.

It is further stated that a joint survey of Revenue and Mining Department was made on 15.10.97 wherein it was found that the quarry of the petitioner falls within the safety zone of the fencing of the Forest Department, therefore, the further renewal was rightly refused. A map showing the position of the quarry in questions within the forest area has also been placed on record as Annexure R/1. A similar counter has been filed by the respondents in the writ petition no.335/06 as well.

It is contended by the petitioners that the respondents have acted in absolutely perfunctory manner inasmuch as no order refusing the renewal has been passed and the petitioners have been restrained from operating the quarries without giving them an opportunity of hearing. The learned counsel contended that the stand taken by the respondents that the quarries in question fall within the safety zone of the fenced area of forest is factually incorrect. The representations made by the petitioners explaining the position have also not been responded. The learned counsel urged that in any case, the respondent could not have stopped the operation of the quarries without passing an appropriate order refusing the renewal or cancelling the license in accordance with the Rules of 1986.

Per contra, the learned Dy.Government Advocate contended that since the lands in question falls within the fenced area of the forest, therefore, the respondents are absolutely

justified in refusing the renewal of license and the petitioners have rightly been directed to stop the operation of the quarries.

I have considered the rival submissions and perused the record.

The petitioners have taken the stand that after transfer of the quarries in their name, they have continuously operated the same throughout and have deposited the rent upto 30th September,2004 vide challen receipt dated 25.9.03, a photo stat copy whereof has been placed on record as Annexure 2. Though, the respondents have taken the stand that the rent was accepted only upto 30th September, 92 and the quarry license was not renewed after the said date but, the specific averment made by the petitioners regarding deposit of rent upto 30th September, 04 vide challan receipts dated 25.9.03 has not been specifically denied by the respondents. Moreover, the respondents have stated that a joint survey of Revenue and Mining Department was conducted on 15.10.97 wherein it was found that the quarries of the petitioners fall within the safety zone of fenced area of the Forest Department. Thus, it appears that the petitioners were permitted to operate the quarries even after 30th September,92.

Assuming that the quarries of the petitioners fall within the fenced area of Forest Department then too, the respondents were under an obligations to pass an appropriate order for

cancellation/refusal of renewal of the quarries licenses issued in favour of the petitioners after following due procedure. The petitioners could not have been directed to stop the operation of the quarries in such a perfunctory manner without even issuing any notice and giving an opportunity of hearing to them. Further, the respondents are under an obligation to decide the representations made by the petitioners in accordance with law. However, the petitioners cannot be permitted to operate the mines at this stage till the controversy as to whether these mines fall within the fenced area of Forest Department is determined by the respondents after giving an opportunity of hearing to the petitioners.

In the result, the writ petitions are partly allowed . The respondent no. 2 is directed to decide the representations made by the petitioners after giving them an opportunity of hearing. The petitioners shall be at liberty to make further submissions by way of fresh representations. The representations of the petitioners shall be decided by the respondent no. 2 as aforesaid within a period of two months from the date of this order, by a speaking order. No order as to costs.

(SANGEET LODHA),J.